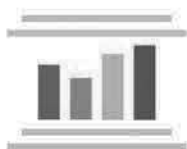


EXECUTIVE SUMMARY

A FRESH START

*Wisconsin's Atypical Expungement
Law and Options for Reform*



WISCONSIN
POLICY FORUM

EXECUTIVE SUMMARY

In Wisconsin, an estimated 1.4 million individuals have criminal records, which may pose a major impediment to securing a job.ⁱ Meanwhile, with unemployment at its lowest point since 2000 and the baby boom generation retiring, businesses and workforce development leaders are looking for ways to remove obstacles for jobseekers. This report considers expungement as one strategy for doing so.

When a criminal case record is expunged, it is sealed from public access unless there is a court order to unseal it. In Wisconsin, an expungement order applies both to paper and electronic court records. Information about expunged cases is removed from the Wisconsin Circuit Court Access (WCCA) website, which is used by many employers to screen job applicants.ⁱⁱ Criminal records only are eligible for expungement in certain cases based on criteria laid out in the Wisconsin statutes.ⁱⁱⁱ

This report examines Wisconsin's expungement law and compares it with similar laws in other states. We also present possible changes for state policymakers to consider that could expand access to expungement and analyze their potential impact on case eligibility.

Key findings of our analysis include the following:

Wisconsin's expungement law contains several uncommon features relative to those in other states.

Our review found no other state where judges are required to make expungement decisions at sentencing (rather than after sentence completion) or where closed cases (those that already have been decided) are not eligible for expungement. In addition, Wisconsin is among a handful of states that limit expungement eligibility only to young offenders (under age 25) and that do not expunge cases that end in acquittals or dismissed charges. Overall, Wisconsin appears to have a stricter expungement law than all of its neighboring states except Iowa.

Modifying any of the atypical features of Wisconsin's expungement law could increase the number of eligible cases substantially. In the short term, the largest change would be allowing individuals to petition for expungement of closed cases. We found 30,638 closed Milwaukee County conviction cases between 2006 and 2017 that meet Wisconsin's current eligibility criteria but remain on the WCCA website. We looked at Milwaukee County because it has the largest caseload in the state. It is difficult to predict how many individuals would petition for expungement of closed cases in a given year if it were allowed.

Our analysis shows reforming Wisconsin's expungement law could reduce the prevalence of a common employment barrier among the state's shrinking pool of jobseekers.

For several other possible changes, we are able to project the number of additional cases that could become eligible in Milwaukee County in 2019 based on recent trends. As shown in the chart below, allowing individuals age 25 and over to expunge the same types of conviction records as younger adults could have a large impact on case eligibility. Enabling individuals to expunge non-conviction records, such as dismissed charges or acquittals, also could have a large impact and could address

a fairness issue, as current state law allows some conviction records to be expunged but does not address non-convictions.

Another option would be to allow more felonies to be eligible for expungement. Currently, only the two lowest classes of non-violent felonies are eligible (Class I and Class H), which carry a maximum sentence of six years. Allowing expungement of Class G, F, and E felonies (maximum sentence of 15 years) likely would have a more modest impact on case eligibility than the other changes considered in our analysis.

Projected additional Milwaukee County cases that could become eligible in 2019



Source: Wisconsin Policy Forum analysis of WCCA data

To put these numbers in perspective, only 506 cases were actually expunged in Milwaukee County between 2010 and 2016 according to an analysis by the Badger Institute, a free-market think tank. That is an average of less than 100 cases per year.^{iv}

In addition, a major caveat to our findings is that repeat offenders may not be able to clear their records entirely. For example, our analysis of a sample of 573 ex-offenders from Milwaukee County found 21.8% had been convicted of another more serious crime currently not eligible for expungement.

Expanding access to expungement would have workload and fiscal implications for state and county governments in Wisconsin that would need to be carefully managed. Shifting expungement decision-making until after sentence completion or expanding eligibility in a major way would result in increased demands on state courts and county clerks of court offices. Depending on how the law is structured, such changes also could affect other parts of the criminal justice system, including district attorney and public defender offices.

A key question would be whether court hearings should be required for all expungement petitions; or whether, instead, judges should be able to decide when hearings are needed. A vast increase in

hearings could place a significant time and cost burden on the courts and other components of the criminal justice system, but it may be possible to allow judges to approve or reject many cases based on specified criteria without hearings.

Another variable that could have a major impact on state and local resources is whether there should be a statutory time limit for processing expungement petitions. The right balance would need to be found to process cases in a timely manner without overwhelming court caseloads.

Lawmakers will have to grapple with legitimate policy questions regarding whether employers and the public *should* have access to information about the criminal backgrounds of individuals. But our analysis shows reforming Wisconsin's expungement law could reduce a common employment barrier among the state's shrinking pool of jobseekers.

In recent years, many states have made substantive policy changes aimed at expanding the pool of individuals who are offered a "second chance" to build productive lives after fulfilling the conditions of a past criminal conviction. We hope this research provides insight to policymakers as Wisconsin considers similar proposals.

NOTES

ⁱ The Pew Charitable Trusts. "States Try to Remove Barriers for Ex-Offenders." June 18, 2015.
<http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/6/18/states-try-to-remove-barriers-for-ex-offenders>

ⁱⁱ Public access to court records is provided online through WCCA, which is the website for the Consolidated Court Automation Programs (CCAP) case management system.

ⁱⁱⁱ Wisconsin State Legislature. Statutes: 973-015 (1m) – Special disposition.
<https://docs.legis.wisconsin.gov/statutes/statutes/973/015>

^{iv} Ibid.